

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

ROBERT W. DONALDSON
Claimant

VS.

ATCHISON CASTING CORPORATION
Respondent
Self-Insured

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Docket No. 181,311

ORDER

On September 6, 1995, the application of the respondent for review by the Workers Compensation Appeals Board of an Award entered by Special Administrative Law Judge William F. Morrissey on March 23, 1995, came on for oral argument by telephone conference.

APPEARANCES

Claimant appeared by and through his attorney Mark S. Gunnison of Overland Park, Kansas. The respondent, a qualified self-insured, appeared by and through its attorneys, Larry R. Mears and John Fresh of Atchison, Kansas. There were no other appearances.

RECORD

The record as specifically set forth in the Award of the Administrative Law Judge is adopted herein by the Appeals Board.

STIPULATIONS

The stipulations as specifically set forth in the Award of the Administrative Law Judge are herein adopted by the Appeals Board.

ISSUES

- (1) Whether claimant suffered accidental injury arising out of and in the course of his employment on the date alleged; and
- (2) The nature and extent of claimant's injury and/or disability.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire evidentiary record filed herein, the Appeals Board makes the following findings of fact and conclusions of law:

The Award of the Special Administrative Law Judge sets out in detail the appropriate findings and conclusions in this matter and the Appeals Board adopts same finding it unnecessary to restate same.

Claimant, a laborer for respondent and respondent's predecessor for over nineteen (19) years, suffered accidental injury on July 27, 1992, when a large piece of iron plate fell from a crane landing on claimant's fellow worker. While claimant and several other workers were trying to lift the iron plate off of the worker, claimant suffered a traumatic injury to his wrists, forearms and knee. After examination claimant was diagnosed with carpal tunnel syndrome and underwent right carpal tunnel surgery to release claimant's entrapped carpal tunnel and received injections into the left hand and wrist. As a result of claimant's injuries, he was assessed a three percent (3%) functional impairment of the right upper extremity by Dr. William O. Reed, Jr. and a twenty percent (20%) functional impairment of the right hand by Dr. Bernard M. Abrams. Claimant was assessed no impairment to his left upper extremity or knee as a result of the injury.

Respondent contends claimant's right carpal tunnel syndrome did not arise out of and in the course of his employment alleging carpal tunnel syndrome cannot occur from a single traumatic incident similar to that experienced by claimant. Dr. Thomas L. Shriwise, an orthopedic surgeon who treated claimant, opined that it was possible claimant may have had asymptomatic carpal tunnel syndrome which, in this case, became aggravated by a single incident. The respondent argues Dr. Shriwise's opinion does not rise to the required level of reasonable medical certainty. The Appeals Board agrees that Dr. Shriwise's opinion, in and of itself, would not satisfy the claimant's burden as is required by K.S.A. 44-501 and K.S.A. 44-508(g).

In this instance, Dr. Shriwise's report is not the only opinion contained in the record regarding the causational factors leading to claimant's carpal tunnel syndrome. Dr. William O. Reed, Jr. testified it would be highly unusual for carpal tunnel syndrome to develop from a single event, but does agree that claimant's carpal tunnel condition could have been an underlying condition, with the injury in 1992 causing the condition to become symptomatic. Dr. Bernard Abrams reached the conclusion to a reasonable degree of medical certainty that the carpal tunnel syndrome suffered by claimant was, in fact, related to the accident of July 27, 1992.

It is claimant's burden to prove all of the conditions upon which his right to benefits depends by a preponderance of the credible evidence. See K.S.A. 44-501 and K.S.A. 44-508(g). The Appeals Board finds in this instance that the medical evidence, while somewhat contradictory, does support claimant's contention that his carpal tunnel syndrome in his right upper extremity was caused and/or aggravated by the incident of July 27, 1992, thus making this condition compensable. The Special Administrative Law Judge awarded claimant a seven percent (7%) impairment of function to the right forearm. This is a compromise of the impairment ratings in the record. The Appeals Board finds the evidence in the record supports an award to claimant of a seven percent (7%) functional impairment to the right forearm and affirms the Award of the Special Administrative Law Judge.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the claimant, Robert W. Donaldson, is granted an award against the respondent, Atchison Casting Corporation, a qualified self-insured, for an accidental injury occurring on July 27, 1992, based upon an average weekly wage of \$555.93, for 4 weeks temporary total compensation at the maximum rate of \$299.00 per week, in the sum of \$1,196.00, followed thereafter by 13.72 weeks permanent partial disability to the right upper extremity at the rate of \$299.00 per week, in the sum of \$4,102.28 for a total award of 7% permanent partial impairment of function to the right forearm in the total amount of \$5,298.28.

As of August 6, 1995, the entire amount is past due and owing and is ordered paid in one lump sum minus any amounts previously paid.

Claimant is granted future medical benefits upon application to and approval by the Director.

Unauthorized medical of up to \$350.00 is ordered paid to or on behalf of the claimant upon presentation of an itemized statement verifying same.

Claimant's contract for attorney's fees is herein approved, insofar as it is not in contravention with K.S.A. 44-536.

The fees necessary to defray the expense of the administration of the Workers Compensation Act are hereby assessed to the respondent to be paid as follows:

William F. Morrissey Special Administrative Law Judge	\$150.00
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IT IS SO ORDERED.

Dated this ____ day of September, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Mark S. Gunnison, Overland Park, Kansas
Larry R. Mears, Atchison, Kansas
Elizabeth A. Kaplan, Kansas City, Kansas
William F. Morrissey, Special Administrative Law Judge
Philip S. Harness, Director